



June 14, 2001

Mr. Sam Haddad
Assistant General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2001-2521

Dear Mr. Haddad:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148441.

The Comptroller of Public Accounts (the "comptroller") received a request for a list of all completed tax audits of taxpayers audited by the comptroller between January 1, 1990, and March 31, 2001, including seventeen data fields. You indicate you will release information responsive to fifteen of the data fields. However, you seek to withhold information regarding audit methods under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a)(1) of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). In *A & T Consultants, Inc.*, the Texas Supreme Court held that the comptroller could withhold from disclosure the audit method and audit group for a particular audit. The Supreme Court stated:

[t]he audit method and audit group remain confidential before, during, and after the comptroller undertakes taxpayer audits. Selecting an audit method constitutes the comptroller's choice about the strategy that he will use in an

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

audit. Similarly, the basis for an audit's assignment to a certain group involves the comptroller's decision on how to maximize staff resources for law enforcement. Auditor groups within the comptroller's office specialize in certain types of audits. Consequently, revelation of the groups would allow taxpayers to ascertain, based on which group audits them, what they are being audited for prior to the completion of an audit. Effective enforcement of the tax laws rests in part on a taxpayer's inability to predict the approach of a tax examination and the focus of an audit. Therefore, since disclosure of the choice of an audit method and the audit group will jeopardize the comptroller's effectiveness, these categories of information are excepted from release by TORA.

Id. at 679 (citations omitted).

We therefore believe that the release of audit method codes “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Accordingly, the comptroller may withhold the requested information regarding such codes pursuant to section 552.108(a)(1) of the Government Code.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

²You also request that we find as a “previous determination” that audit method codes in completed audits are excepted from disclosure by section 552.108 of the Government Code. We decline to issue such a ruling at this time.

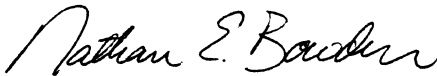
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 148441

Enc: Submitted documents

c: Mr. Tommy J. Morgan
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(w/o enclosures)